

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In re**

**DPH HOLDINGS CORP., et al.,**

**Chapter 11**

**Case No: 05-44481 (RDD)  
(Jointly Administered)**

**Reorganized Debtor(s)**

**JAMES GRAI, et al.,**

**Movant(s) Adversary Proceeding No:  
09-01510 (RDD)**

**v.**

**ACE AMERICAN INSURANCE COMPANY  
and PACIFIC EMPLOYERS INSURANCE  
COMPANY, DELPHI CORPORATION;  
STATE OF MICHIGAN WORKERS'  
COMPENSATION INSURANCE AGENCY;  
and STATE OF MICHIGAN FUNDS  
ADMINISTRATION,**

**Defendants.**

**DEBTORS' MOTION PURSUANT TO SECTION 362 OF THE BANKRUPTCY  
CODE TO MODIFY AUTOMATIC STAY**

**GROUND TO LIFT THE AUTOMATIC STAY**

Section 362 provides the Court authority to modify or lift an automatic stay to proceed against the Debtor in a few instances. Section 362(b)(1) provides that the Stay may be modified or lifted "for cause." 11 U.S.C. 362(d)(1) (2009) neither the statute nor the legislative history defines "cause." In re Sonnax Industries, 907 F.2d 1280, 1285 (2d. Cir. 1990), the Court found that the Bankruptcy Courts are empowered to make such a determination on a case by case basis.

Section 362(d)(1) requires an initial showing of cause by the Movant. The facts of each request will determine whether relief is appropriate under the

circumstances. H.R. Rep. No. 595, 95<sup>th</sup> Congress, 2d Session 343-44, reprinted in 1978 U.S. Code Congress and Administrative News 6300.

**Where the claim is one covered by insurance or indemnity, continuation of the action should be permitted since hardship to the debtor is likely to be outweighed by the hardship to the plaintiff. In addition the liquidation of a claim may be more conveniently and speedily determined in another forum. Existing case law seems to indicate that the decision of whether or not to lift the stay is at the discretion of the bankruptcy judge.**

This Court is given board discretion to modify the automatic stay. Sonnax, 907 F. 2d at 1288. It is very facts specific. Weighing a number of factors, is required in determining a motion on such grounds. The Sonnax factors include:

- (1) Whether relief would result in a partial or complete resolution of the issues;
- (2) The lack of any connection with or interference with the bankruptcy case;
- (3) Whether the other proceedings involved the debtor as a fiduciary;
- (4) Whether or specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) Whether the debtors' insurer has assumed full responsibility for defending it;
- (6) Whether the action primarily involved third parties;
- (7) Whether the litigation in another forum would prejudice the interest of other creditors;
- (8) Whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) Whether the movant's success in the other proceedings would result in a judicial lien avoidable by the debtor;

- (10) The interest of judicial economy and the expeditious and economical resolution of litigation;
- (11) Whether the parties are ready for trial in the other proceedings; and
- (12) The impact of the stay on the parties and the balance of harm.

In re Market XT Holding Corp. 2009 Bankr. LEXIS 1897 at 11-12 (Bankr. S.D.N.Y. July 20, 2009). (Sonnax 907 F.2d at 1286). In re Bally's Total Fitness of Greater New York, 402 B.R. 616, 623 (Bankr. S.D.N.Y. 2009). "Not all these factors will be relevant in every case". Mazzeo v. Lenhart 167 F.3d 139, 143 (2 N.D.2<sup>nd</sup> Cir. 1999).

The applicable factors in this case were in favor of granting the lifting of the stay in this instance:

- (a) Relief will result in complete resolution of the claim. The Debtors are a necessary party to the Michigan litigation and the ability to enforce any award against applicable insurance proceeds, these claims involves two important non-debtor parties including new GM and the Self-Insured Security Fund of the State of Michigan. Granting relief request in this motion would result in complete resolution of the Michigan litigations because all parties will be or will have the opportunity to be represented in Michigan Workers' Compensation courts.
- (b) No interference with bankruptcy case. These cases are in the final states of readiness for trial after years of litigation. Many of these cases have already gone to trial and obtained judgment against Delphi Corporation. The liability for these cases rest solely with the new GM; or, with the Self-Insured Security Fund of the State of Michigan. If the Stay is not lifted, the case will have to be litigated in the Bankruptcy Court which may result in greater interference with the bankruptcy case. This Court would need to familiarize itself with the record of Michigan litigation that spans many years.

- (c) Specialized tribunal. This Court should allow the completion of the Michigan workers' compensation litigation because it resolves around personal injury issues based on Michigan State law and the claimants are seeking a trial by a Michigan Magistrate. In these Michigan cases, the Michigan Workers' Compensation Courts are a specialized tribunal and its significant expertise and experience is necessary. Sonnax, 907, F.2d at 1286 (the Court should consider whether or not the tribunal with necessary experience exist to hear the cause of action). In re Metz, 165 B.R. at 772 (lifting the stay based on the Sonnax factors, and specifically on the fact that the expertise of the Bankruptcy Court is unnecessary).
- (d) Insurance defense. The responsibility for workers' compensation payments in these cases are to be determined by the Michigan Workers' Compensation Court. General Motors has assumed responsibility on many former Delphi employees' workers' compensation cases. In other cases, the Self-Insured Security Fund has taken on the payments for these claimants. If these claimants are successful in their workers' compensation cases in Michigan, payments will be the sole responsibility of either General Motors Corporation or the Michigan Self-Insured Security Fund. The questions as to whether or not there will be payments to these workers compensation litigants in Michigan will be determined after trial by the Michigan Workers' Compensation Courts.
- (e) The action involves non-debtor parties. Workers' compensation payments will be made, if any exist, through the Michigan Self-Insured Security Fund or the new General Motors Corporation.
- (f) The pending litigation will not affect or prejudice the other creditors of the debtors. It is clear that allowing the Michigan workers' compensation claimants completion of the Michigan litigation will not prejudice the other creditors. If the Michigan Workers' Compensation Court finds that the injured employee was a employee of Delphi and General Motors has not accepted the responsibility for that employee, that triggers the responsibility of the Michigan Self-Insured Security Fund. If the Court finds that the employee is the responsibility of General Motors Corporation, General Motors will be responsible for workers' compensation

payments through their self-insured status. The defenses raised in opposition to these claims will have to be made and will be the same if whether inserted in this Court or Michigan Workers' Compensation Courts. Therefore, any prejudice that the Michigan workers' compensation litigation would have on other creditors would be negligible.

- (g) Interest of judicial economy. The interest of judicial economy and the expeditious and economical resolution of litigation requires that that Michigan litigation be allowed to proceed to final determination. It certainly would serve judicial economy to have the Michigan Workers' Compensation Court that is familiar with the facts and circumstances of the case to proceed because this action has been pending in the Michigan Courts for years. The Michigan Workers' Compensation Courts would have a tremendous advantage over any other court in as much as the Michigan Workers' Compensation Courts are familiar with the applicable law at issue in these matters. Additionally, there are significant questions as to whether this Court has jurisdiction to make binding determinations as to issues revolving solely on Michigan state law.
- (h) The parties are ready for trial. All the listed workers' compensation claimants have been litigating their case for years in the Michigan Workers' Compensation Court. Many of them have obtained prior judgments against Delphi. When a self-insured company goes out of business and does not have insurance coverage for their worker' compensation purposes, it automatically triggers the responsibility of the Michigan Self-Insured Security Fund. General Motors Corporation and the Self-Insured Security Fund of the State of Michigan have been hiding behind the bankruptcy Stay for years. These Michigan workers' compensation claimants have been without money because of Delphi's bankruptcy. If the bankruptcy Stay is lifted, the courts will be able to determine whether General Motors Corporation or Michigan Self-Insured Security Fund is responsible for workers' compensation payments.
- (i) Balancing of harms weighs heavenly in favor of the claimants. Many of these claimants have been waiting for years to have their day in court. As a result of the Stay, the claimants have unable to seek a determination of available proceeds from either General Motors Corporation or the Michigan Self-Insured Security Fund. The impact of


modifying the Stay to allow the claimants to proceed with the Michigan workers' compensation litigation is minimal because either General Motors Corporation has already acknowledged they would be assuming the responsibility for workers' compensation payments or the Michigan Self-Insured Security Fund will be responsible by law. Delphi would incur no financial hardship because they would not incur any attorney fees or costs. These cases are already being defended by General Motors Corporation or the Michigan Self-Insured Security Fund.

The drafters of the statute envisioned lifting the Stay to allow other proceedings to continue where appropriate. It would be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy would result, in order to leave the parties to their chosen forum and to relieve the Bankruptcy Court from many duties that may be handled elsewhere.

Further, the Sonnax factors were in favor of the Michigan claimants in this matter. The claimants respectfully request that the Court enter an order, modifying the automatic stay to permit the Michigan litigants to continue in the Michigan Workers' Compensation Courts.

**WHEREFORE**, it is respectfully requested that this motion be granted in all respects together with such other and further relief as the Court deems just and proper.

Respectfully submitted,

  
MICHAEL P. DOUD (P55491)  
1121 N. Michigan Avenue  
Saginaw, MI 48602  
(989) 752-9595

Date: 10-17-11

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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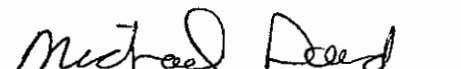
**Defendants.**

**NOTICE OF MOTION FOR JOINDER OF PARTIES**

PLEASE TAKE NOTICE that a hearing on the annexed Motion of Delphi ("Delphi") and its affiliated debtors in the above-referenced chapter 11 cases (together, the "Debtors") for relief from the automatic stay, to the extent applicable, to permit DPH Holdings Corp., et al. ("Delphi"), Ace American Insurance Company ("Ace"), State of Michigan ("State of Michigan"), State of Michigan Workers' Compensation Insurance Agency ("Workers' Compensation"), General Motors ("GM") and State of Michigan Funds Administration ("State of Michigan") for joinder of all similarly situation Movants in a Motion to Modify the

Automatic Stay in the above captioned matter covered workers' disability compensation benefits incurred by the Debtors' current and former officers, directors and employees that have been named as defendants in various legal proceedings more fully described in the Motion, ("a list of said Movants is attached as Exhibit 1") will be held before the Honorable Robert Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York, 10601 ("Bankruptcy Court"), on **November 17, 2011 at 10:00 a.m.** (the "Hearing").

Dated: 10-17-11

  
MICHAEL P. DOUD (P55491)  
1121 N. Michigan Avenue  
Saginaw, MI 48602  
(989) 752-9595



# EXHIBIT

1

## **LIST OF MOVANTS**

Claudia Abner v Delphi  
Gloria Acker v Delphi  
Steve Anderson v Delphi  
Laura Aranja v Delphi  
Randall Arndt v Delphi  
Kevin Ashley v Delphi  
Roger Ashmore v Delphi  
Dennis Bachula v Delphi  
Eugene Bady v Delphi  
Roy Baldwin v Delphi  
Julie Bark v Delphi  
Della Barbosa v Delphi  
Brenda Beard v Delphi  
Odell Beasley v Delphi  
Johnnie Bell v Delphi  
Alvin Benavides v Delphi  
Norma Blade v Delphi  
Larry Block v Delphi  
Spencer Breamsey v Delphi  
Gary Brege v Delphi  
Cleophas Brown v Delphi  
Russell Brown v Delphi  
Larry Bukowski v Delphi  
Grant Burns v Delphi  
Tim Campbell v Delphi  
Saundra Carpenter v Delphi  
Emma Chambers v Delphi  
Frank Chavez v Delphi  
Andrew Chernow v Delphi  
Deborah Clark v Delphi  
Edward Clifton v Delphi  
Clyde Childress v Delphi  
James Conklin v Delphi  
Thomas Contreras v Delphi  
Larry Conway v Delphi  
Cristina Coon v Delphi  
Debra Cox v Delphi  
Joyce Crowe v Delphi  
Maggie Crumpton v Delphi  
Michael Cunningham v Delphi  
Debra Davis v Delphi  
Vanessa Dendy v Delphi  
Peter Diaz v Delphi  
Doris Dobyne v Delphi

Crystal Drake v Delphi  
Michael Driscoll v Delphi  
Daniel Ducham v Delphi  
Gary Dwyer v Delphi  
Lynette Earegood v Delphi  
Declan Ellis v Delphi  
Lucille Ellison v Delphi  
Mary Enriquez v Delphi  
Eugene Erndt v Delphi  
Ricardo Espinosa v Delphi  
Victoria Farra v Delphi  
Debra Farver v Delphi  
Claudine Fife v Delphi  
Anthony Fleming v Delphi  
Julius Fodo v Delphi  
Henderson Foster v Delphi  
Yolanda Freeman v Delphi  
James Gage v Delphi  
Annie Gibbs v Delphi  
Shirley Gibson v Delphi  
Walter Gibson v Delphi  
Faye Gillerson v Delphi  
James Goad v Delphi  
Terry Golladay v Delphi  
Elizabeth Gonzales v Delphi  
Dayton Goodrich v Delphi  
Kimberly Gould v Delphi  
James Grai v Delphi  
Linda Groulx v Delphi  
Gordon Guymer  
Tracy Gwizdala v Delphi  
Randall Hall v Delphi  
Scott Harder v Delphi  
Kevin Hardy v Delphi  
Stella Harper v Delphi  
Eden Harrison v Delphi  
Lorene Haynes v Delphi  
Roy Helminick v Delphi  
Ardella Henderson v Delphi  
Walter Hillman v Delphi  
Karen Horton v Delphi  
Mary Hunter v Delphi  
Nancy Hurst v Delphi  
Sharayal Johnson v Delphi  
Ann Jones v Delphi  
Christine Jones v Delphi

Linda Jones v Delphi  
Vernon Jones v Delphi  
Tammy Killingbeck v Delphi  
Mettie King v Delphi  
Vera King v Delphi  
Kerry Kozel v Delphi  
Nicodem Krasinski v Delphi  
Scott LaFramboise v Delphi  
Shelly Lambert v Delphi  
Delphine Layton v Delphi  
Pierre Lefleur v Delphi  
Norris Lewis v Delphi  
Kathy Loiselle v Delphi  
Paul Loiselle v Delphi  
Pablo Lopez v Delphi  
Deborah Lorenz v Delphi  
Thomas Lutenske v Delphi  
Callie Mack v Delphi  
Claude Macom v Delphi  
Daniel Malusi v Delphi  
Constance Masters v Delphi  
John Matznick v Delphi  
Frank McCarthy v Delphi  
Carlton McCuiston v Delphi  
Quida McGee v Delphi  
Michael McKellar v Delphi  
Gary Mead v Delphi  
Thomas Metiva v Delphi  
Larry Miller v Delphi  
Debra Mink v Delphi  
Dale Mize v Delphi  
William Montgomery v Delphi  
Shirley Murry v Delphi  
Debra Nagy v Delphi  
Naomi Neal v Delphi  
Juliann Nickoloff v Delphi  
Maria Ortega v Delphi  
Robert Ostash v Delphi  
Carol Paciorek v Delphi  
Barbara Parker v Delphi  
Bonnie Patterson v Delphi  
Dia Patterson v Delphi  
Beth Perez v Delphi  
Maureen Pierce v Delphi  
Greg Pobocik v Delphi  
Richard Poe v Delphi

Mary Potts v Delphi  
Ray Pratt v Delphi  
Gene Presley v Delphi  
Lula Pritchett v Delphi  
Edward Quarderer v Delphi  
Robert Raab v Delphi  
Thomas Radabaugh v Delphi  
Donald Reinhardt  
Paul Reis v Delphi  
Michael Remaidner v Delphi  
Michael Richards v Delphi  
Paulette Rigda v Delphi  
Richard Rivette v Delphi  
Gerald Roof v Delphi  
Barbara Ross v Delphi  
Jeanie Running v Delphi  
Cynthia Russell v Delphi  
Robert Sabo v Delphi  
Leila Salo v Delphi  
Darwin Sanada v Delphi  
Alma Sanders v Delphi  
Letti Sanders v Delphi  
Yvonne Sanders v Delphi  
Ronald Schmidt v Delphi  
Nancy Schriber v Delphi  
Doris Scott v Delphi  
Bonnie Shepherd v Delphi  
Suzanne Sherwood v Delphi  
Menort Sims v Delphi  
Bobbie Smith v Delphi  
Corrine Smith v Delphi  
Diane Smith v Delphi  
Laura Smith v Delphi  
Stephanie Smith v Delphi  
Terrence Snook v Delphi  
Shirley Snowden v Delphi  
Tyrone Sparks v Delphi  
Michael Spear v Delphi  
David Stahler v Delphi  
James Stacy v Delphi  
Carolyn Steward v Delphi  
Patty Stocker v Delphi  
James Stohpaul v Delphi  
Patricia Stuart v Delphi  
Dennis Stuhr v Delphi  
Elmer Tappen v Delphi

Michael Taylor v Delphi  
Katie Townsend v Delphi  
Alan Trisch v Delphi  
William Tunney v Delphi  
David Vinton v Delphi  
Terry Visnaw v Delphi  
Nick Wagner v Delphi  
Karen Walker v Delphi  
Sandra Watson v Delphi  
Judy Weathers v Delphi  
Glendale Weidner v Delphi  
Elaine Welch v Delphi  
Douglas Wendland v Delphi  
James Weston v Delphi  
Cynthia White v Delphi  
Robert Whitting v Delphi  
Gregory Willis v Delphi  
Henrietta Wilson v Delphi  
Barbara Winchell v Delphi  
Jacquelyn Wintersmith v Delphi  
George Worley v Delphi  
Solomon Yearby v Delphi  
Gary Zieroff v Delphi

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and STATE OF MICHIGAN FUNDS  
ADMINISTRATION,**

**Defendants.**

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                      ) ss  
COUNTY OF SAGINAW    )

MICHAEL P. DOUD, being first duly sworn deposes and says that on the 17<sup>th</sup>  
day of October, 2011, he served a copy of:

**Debtors' Motion Pursuant to Section 362 of the Bankruptcy Code to Modify  
Automatic Stay**

**Notice of Motion, Pursuant to Section 362 of the Bankruptcy Code, for an Order  
Modifying the Automatic Stay to Allow Advancement Under Directors and  
Officers Insurance Policies by Delphi, Ace American Insurance Company, State of  
Michigan, General Motors and Self-Insured Accident Fund**

**Order Pursuant to 11 U.S.C. § 362(d) Modifying the Automatic Stay Imposed by 11  
U.S.C. § 362(a)**

**Notice of Appearance**

**Motion for Joinder of Parties**

**Notice of Motion for Joinder of Parties**

on the following:

United States Bankruptcy Court, 300 Quarropas Street, White Plains, New York,  
10601

Office of the United States Trustee for the Southern District of New York, 33 Whitehall  
Street, 21<sup>st</sup> Floor, New York, NY 10004

Skadden, Arps, Slate, Meagher & Flom, LLP, 333 West Wacker Drive, Ste. 2100,  
Chicago, IL 60606

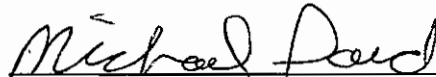
Duane Morris, LLP. 30 South 17<sup>th</sup> Street, Philadelphia, PA 19103

Dewey & LeBoeuf, Martin Bienenstock, 1301 Avenue of the Americas, New York NY  
10019-6092

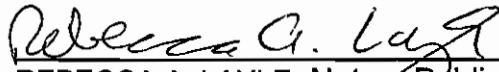
Michigan Department of Labor & Economic Growth Workers' Compensation Agency,  
Dennis Raterirk, P.O. Box 30736, Lansing, MI 48909-7717

Michigan Department of Labor & Economic Growth Workers' Compensation Agency,  
Michael Cox, P.O. Box 30736, Lansing, MI 48909-7717

by placing the same in an envelope, sealed with First Class Postage prepaid thereon  
depositing same in the United States Mail.

  
MICHAEL P. DOUD (P55491)

Subscribed and sworn hereto me this 17<sup>th</sup> day of October, 2011.

  
REBECCA A. LAYLE, Notary Public  
Bay County, Michigan  
My Commission Expires: 1/30/16  
Acting in the County of Saginaw